





I put the fourth question to the jury, whether the def

I put the fourth question to the jury: whether the defendants acted for the best, as prudent men might, for the plaintiff's interests at this time. It is unmovable that that special jury in this city have been misled, because I fear that the jury in this case were misled, or questioned because of the manifestly either/or character of the third question. As the jury found, that the defendants could not all dry and repack the wool, it certainly follows that the defendants could not all expend the same operations might have been done by them.

The only objection, then, is to the verdict. Enough has been conceived, then, stated in the course of this judgment, to show that the jury were right in the third question, and that the first and second were right. But, if we should not be able all the time to see that in that opinion, the Court clearly could not, in accordance with the rule hitherto acted on by us, disturb those findings in the absence of any evidence to show clearly and unmistakably that they were wrong.

The leading authorities as to the sale or hypothecation of cargoes by the masters of ships are "The Gratiatius" before Lord Stowell, 3, C. Robinson, 240 (1801); the cases before the Privy Council in *The Buenos Ayre*, 5, Moore, 459 (1808), and *The Hamburg, Brow, and Lund*, 253 (1811) (1808), and *The Karam II*, 1, R. Adm. 29 (1868), *The Lizard II*, 1, L. Adm. 294 (1868).

"The character of agent for the owners of cargo is imposed upon the master by the necessity of the cargo, and that alone." As a consequence this principle, rule follows, secondly, that "the master, before he hypothecates the cargo, *ought*, if he have, according to reasonable tenet, the means of so doing, to communicate with owners to express their will as to the cargo. The man who is the agent of necessity, and not of choice, has right to deprive them of their opportunity of expressing their will as to the cargo, and, therefore, *must* communicate

with them, if it be reasonably within his power to do so. So the same Judge, adopting Lord Stowell's words, says: "No doubt the master is bound to use his power to protect the cargo. It is his duty to endeavor to communicate with the owner, if absent. The law looks with jealousy upon the exercise of authority of the master over the cargo. The first rule is, that the master is bound to follow the two important rules in any decision of the English Courts in any text book; and it is obvious that, if either of the rules be unsettled, a wide door will be opened for the fraud of the master in selling cargoes while under their care, whereas the law is intended to prevent interference with, or delay the due transmission of goods to the ports of destination, under the bills of lading."

If the present case, the plaintiff sues for the value of the cargo, the defendant's defence is that the cargo was lost by transmission by the *Boomerang* being stricken by the *Ptory River*, forty miles from Rockhampton, to Sydney. The *Boomerang* being stricken, unable to complete her voyage, some of the cargo was landed at Rockhampton, and the remainder was directed by the defendants in Sydney to sell the cargo, including the plaintiff's nineteen bales which were slightly damaged.

Now, these facts the defendants' only possible answer to the plaintiff's present suit must (according to the authorities) be—first, that some necessity of the case required the sale; and, secondly, that the defendants were unable to communicate with Messrs. Willis, the consignees.

The rule last granted by this Court on the 6th of September last complains, by its first and second grounds, of the verdict for the defendants was against law and evidence; but that the jury, in finding a verdict for the defendants, had been misled by the instructions of the court, and, in the above case, by certain questions in writing, six in number, given to the jury "as the sole questions of fact" for their consideration; and "that the fourth of such questions induced the defendants, time and circumstances considered, not to furnish evidence in their own defence."

the interests of the plaintiff, was more especially calculated to mislead the jury by omitting all reference to urgent necessity, or to necessity as the sole ground for the plaintiff's suit by defendants.

As to the first and second questions, in the new trial, appears that the *non-necessity* of the sale was in fact to the jury, but not in writing, and answered by them to the affirmative, and after attentively considering all the evidence, they found in favor of the defendant, and against the plaintiff, except by their having been misled by two circumstances, viz. First, by the explanation of *non-necessity* given to the jury, as read from Fisher's notes and not denied, as only equivalent to the *non-necessity* of the sale; and second, by the fourth question placed before them.

writing as to the defendant having "acted as wise and prudent man."

It is, we understand, the law, in my opinion, mislaid in the jury verdict for the defendant; as the "expectation" of the sale, and the acting as "wise and prudent man" in the sale, are considerations wholly insufficient to constitute any "necessity" for the sale; and strongly calculated to induce the jury to make a sale of the property, not between the parties, viz: the legal "necessity" of a sale whatever of the plaintiff's wool, without his consent.

It is also clear upon the evidence: first, that no facts or circumstances were proved by the defendants which have reference to the necessity of a sale of the property, or of the sale,—the "necessity" of such sale in its proper sense being in great measure assumed as preliminary to the

minor considerations contained in the six questions; and the court was further assisted to construe the agreement made with Meers, Willis and Co., in Sydney, through several communications took place between defendants and their Rockhampton agent; as also with some consignee as Meers, Gilechrist, also resident in Sydney.

It is to be noted, that the ground of a material misstatement, is not a ground of repudiation, and the court was, therefore, clearly of opinion that these grounds were simply sustained for the plaintiff.

With regard to the other seven distinct grounds upon which the rule nisi was granted, relating to the details of the contract, the court was of opinion that the plaintiff was to concur with Sir James Martin's argument that these conditions tended greatly to withdraw the attention of the jury from the real issue, viz., the legal "necessity" of the case.

And the "necessity" requirement is not satisfied if the defendant's actions, taken together with the jury's relationship to the case, do not "cling to the plaintiff's wool, on the assumption that a male was absolutely necessary."

It will also be seen (1) that in the written head to the questions, an existing emergency is made the basis for the questions, and (2) that the six questions are worded as extending to shift the *onus probandi* in a very great measure from the defendant to the plaintiff.

I would also point out that in the present case the defendant's plea, very properly, uses the word "necessity" and "necessity" is the only word in any of the questions which "placidity," "expediency," or "prudence" has been used; or if the word "necessity" had been qualified or explained away by such expression, tending to diminish

THAT the plaintiff, in pursuance of the contract, delivered the goods to an ordinary carrier for the use of the defendant, to be delivered in Dublin at his store there. This, it is contended, was a delivery to the carrier, and not a direct delivery to the defendant himself. And on these facts, we cannot assume that the stoppage and retaining of the goods, much less the selling of the goods, were in the case, and, therefore, that the goods were not sold. In the case, then, no sale of goods and delivery, followed by a seizure, which may or may not turn out to be unlawful, the defendant's remedy for this is by action of trespass, and not by action of detinue, which is to permit the delivery at Dublin. But, the goods being his, the defendant must pay the note which he gave for them. If the carrier's stoppage was duly exercised (assuming it to have been on the ordinary ground of insolvency), it is apprehended inevitably, a resale of the goods could not

to justified—because of the same reason; because the original contract was not rescinded, it is not rescinded, but remains. Such a contract, therefore, would stand as a contract, and not as a rescinded. For this, the case of *Suprenus v. Wilkinson*, 2 B. and Ad. 326, is a sufficient authority. See also in re *Humberston*, 1 De Ges., Bankrupt K. 262. The same rule applies to the case of a rescinded contract, where there had been a full and complete stoppage, and the goods had been sold to a third party. Even if in that case the purchaser might rescind his contract, because it would be iniquitous for him to retain the price and yet retain possession of the goods, we are not in the other case. On the contrary, there is no allegation of a rescission. On the contrary, it is admitted on the last argument, the defendant has in each case treated his purchase as subsisting, by bringing an

It is not necessary to establish other possession, such as by purchase, or a right as against their possession—according as that action may be, in form, trespass or trover, or a special action only for the wrongful sale.

MR. JUSTICE FRYER.

I concur in the judgment that has just been read, and I desire to add only a few words.

I thought for some time that this was a case in which the maxim that a person should not be allowed to take advantage of his own wrong was applicable; and, accordingly, that the plaintiff should be required to recover the amount of the promissory note given as the price of goods of which the defendant has been deprived by the plaintiff's own act, and which, moreover, or the value of the goods.

However, on the authorities, that the plaintiff must succeed on this record, and that the defendant's only remedy is by a cross-action for the wrong committed by the plaintiff.

By the contract and the delivery of the promissory note the right of property in the goods had clearly passed to the defendant. According to the plea, the goods were specific, and by arrangement between the plaintiff and the defendant were to be delivered by the plaintiff to a carrier. Thus the goods were to be delivered to the plaintiff, and the plaintiff nothing more remained to be done by the plaintiff to the vendor; and not only the right of possession had passed, but by the delivery to the carrier, the goods themselves had passed out of the actual possession of the vendor. After the goods were delivered to the carrier, the defendant as vendee, and not the right of *storage in transit*.

the plaintiff is simply in the position of a wrong-doer, and so each liable in the proper form of action for the wrong he has committed; while, having fully performed his contract, he is in law entitled to receive the stipulated consideration.

---

**INSOLVENCY COURT.**  
MONDAY.  
BEFORE THE CHIEF COMMISSIONER.

In the estate of Mary Finn, a special meeting. Insolvent and a witness were examined by Mr. Barker on behalf of the official assignee.

In the estate of Sydney C. Hurt, a special meeting. Two witnesses were examined by Mr. Conzett Stephen on behalf of the official assignee.

In the estate of John J. Wright, an adjourned special meeting. William Wright was examined by Mr. Barker on behalf of the official assignee, and the meeting was adjourned until 1 p.m. to-morrow.

In the estate of Alexander A. Laskerstein, a special meeting. Involuntary examined by Mr. C. Storch on behalf of the official assignee, and the meeting was adjourned until the 14th March.

SCHEDULE FIELD.

Thomas Dawson, of Sydney, gentleman, Liabilities, £240 13s. 6d. Assets, £50.

APPLICATIONS FOR CERTIFICATES.

Tuesday, 8th March, at 11 a.m.—Before the Chief Commissioner: William James Fredrickson, of Sydney, Bookseller, Edwin Harris, Newland (of the firm of William Harris and Co., Sydney), and

Sparke, Alfred Warren, John Burgess, Patrick Reardon, adjourned from the 22d instant. Edward Hutton adjourned from the 1st instant.

Tuesday 15th March, at 11 a.m.—Before the Chief Commissioner:—  
James Wilson, George Thomas Wilson, George Henry Thorne, George Smith Hall, James Henry Layton, John Malcolm, William Whitmore, Samuel Porter, adjourned from the 8th instant. William Widdowson, adjourned from the 22nd of February last.

MEETINGS OF CREDITORS.

Tuesday, 5th March.—Before the District Commissioners: Thos Jago Walker, James Gorman, Geo. East Malind, at 11 a.m.; John Gorman, single or only meeting at East Malind, at 11.30 a.m.; Eyre Wilkins, single or only meeting at East Malind, at 11.30 a.m.

Wednesday, 6th March, at 11 a.m.—Before the Chief Commissioner: Charles Dawson and Edmund Deacon, second meeting; adjourned from the 29th of February last.

[illegible]

only meeting: Thomas Williams, single or only meeting; Thomas Coking, adjourned single meeting from the 23<sup>rd</sup> of February to the 27<sup>th</sup> of March; and Thomas Williams, single or only meeting, adjourned single meeting from the 4<sup>th</sup> instant. Before the District Commissioners: Thomas Fendley Pidding, second meeting, of *Southard*, at 11 a.m.; and Thomas Williams, single or only meeting, of *East Matfield*, at 11 a.m.

**THURSDAY, 14<sup>th</sup> March**—At the office of Messrs. Hoarberg, Wade, and Spain, at 3 p.m.: a meeting of Mackinlay, Brothers, meeting for the direction of *Southard*.

**COTTER BUSINESS.**

**Thursday, 14<sup>th</sup> March**, at 11 a.m.—Before the Chief Commissioners. Motions: Mr. Humphrey, official assignee, to move for the appointment of the following persons as cotter managers of the Estate of John Gray, a first dividend of the 1d. on current profits, and present profits in full. Estate of Stephen Watts, a first dividend of the 1d. on current profits, and present profits in full. Estate of Stephen Watts, a first dividend of the 1d. on current profits, and present profits in full. Estate of Stephen Watts, a first dividend of the 1d. on current profits, and present profits in full.

**CENTRAL POLICE COURT.**  
**MONDAY.**  
BEFORE their Worship the Police Magistrate, Messrs. Vickery, Pearce, Murphy, and Powell.  
Eight persons were brought on a conviction of drunkenness and riotous behaviour, in suits varying from 1s. to 20s.  
William Johnson was charged with being an idle and disorderly person. Constable Willmott deposed that a little after midnight on Saturday,

and about to fight, knowing him to have no lawful means of support, took him into custody. Sergeant Goldrick deposed that he has known prisoner for eighteen months, never saw him work, and believes that he has no lawful means of support. He deposed that he has known prisoner that he is the proprietor of a horse and cart, working with what he earns his living; and called Joseph Dixon, who deposed that Johnson has for some weeks been working with a cart, purchased and owned by the head of a person named Kane. By his Worship Mr. Pearce: Cannot swear that Johnson is a respectable man. Prisoner asked that the charge might be postponed for Mr. Kane's evidence. Their Worship deposed that they had no objection for the prisoner might send for Mr. Kane; they could not send for him.

Constable Larkins informed the Bench that it is a fact that Johnson was with a horse, whereupon their Worship asked the prisoner, "Did you say that horse would do well to be out of the night, or the next time he may receive a sentence of six months' imprisonment?"

Harriet Smith was brought forward by constable Larkins, who deposed that about 1 o'clock on Sunday morning he found her in the company of a drunken man, who was in custody for being a common prostitute wandering in a public place. To be imprisoned three months.

Thomas Threlton and William Hodgson were charged with larceny. Sergeant Keogh deposed that on Saturday afternoon he and the prisoner, William Hodgson, were walking together, and he saw the prisoner, William Hodgson, knowing them, he followed and watched them: they stood together in front of Mr. Beane's shop, George-street,

until Thursday took up a chair, which he put under the table, and he and his wife, and two other persons, were seated there; the shirt produced he took from under Thornton's coat. James Deane, of George-street, clothier, identified the shirt as his property, and valued it at £s. 6d. The prisoners, clothing to be summarily tried by their Worship, were found guilty, and the offenders were sentenced to be imprisoned three months.

Eliza Budd was charged with having unlawfully abetted herself from her service with J. Thomas Chapman, to whom she was apprenticed by the managers of the New-land and Litchfield, &c. School, but by the consent of both parties, the indictment was cancelled.

Six prisoners were discharged, and five were remanded. On the summons paper were fourteen cases, of which

tion were dismissed, and was postponed, and there was an adjournment till the following day. On the next day, the defendant in information in which Samuel Klippax charged him with having made use of abusive words, whereby a breach of the peace might have been occasioned. It appears that the parties happened to meet at the residence of Margaret, the wife of the defendant, on the 12th of March, the defendant having reference to something in connection with the West Sydney election, complainant having objected to a man brought forward by complainant as a voter, defendant said to complainant, "You are a damned scoundrel, and a damned liar," which complainant denied; thereupon defendant said, "You—wretch, I think you did," and called him by other epithets. Andrew Wakeley was called by Mr. Roberts, and he corroborated complainant's story. The jury returned a verdict of guilty, and the defendant was fined £100.

nett, and Mathew Hayes, who gave a different version of the words used by defendant. Their Worship (Moore, Murphy and Powell) found the defendant guilty, and

10

before the child was born; and she did not inform Dr. Gott of her condition; he did not ask her; on the last day he saw him, he, after questioning her, told her that she was in the family way; that he had suspected it, even at, and had not given her anything that would harm him; he told her to be careful, and to tell no one, and he had made a confidential agent of him; up to the last, she had made a secret. The jury returned a verdict of murder against the father of the child, who was committed to the State Prison at the next sitting of the Criminal Court.

**DEATH FROM DROWNING.**—The City Coroner held an inquest, yesterday afternoon, at the Observer Tavern, on the street North, touching the death of a man named Molloy. Constable Thomas J. Tardie was deposed about 6 o'clock on Saturday evening last, from going

stayed, he proceeded to the Baltic Wharf, at the first street-door, and there saw what appeared to be a man of a middle age, and of a dark complexion, who, he said, he perceived, was about to get into a boat and lift the object up upon his back; he went into the boat; upon his doing so he observed was the body of a man. Felton put a rope round the neck and was about to pull it up with the exertion of the coat and back, which were missing in the ship; he searched it, and found thereon a half-piece; he had the body removed to the dead-house. Circular was then examined the body, but could observe any marks or signs of violence. Mr. Molyneux deposed that he resided in Parsonage-lane, was the wife of the deceased, who was fifty-seven years of age and a native of Birmingham, England; he

[illegible]

lived in Market-street; he had known the  
man by sight for years; the last time he  
saw him alive was about a year or two  
ago, on a Friday evening last, in Market-street,  
near the streets, with an empty prawn basket; he  
was going in the direction of Pyramont Bridge—was very drunk, and  
was not five years more than eighty; he fell once or  
twice down the street; he had a pocket-book  
in his hand; George Felton, a shipwright, deposed that he  
saw him in Clarence-street; he knew the deceased; first  
when he kept the Coach and Horse, in Cumber-  
land-street; between 6 and 7 o'clock, on a Friday evening  
last, he saw him intoxicated, at the foot of Market-street,  
with an empty basket; some boys were chaffing him; he was  
talking about and could hardly walk; witness had

He then asked the lady, "Did Saturday evening come proceeding from the water?" "Yes," said the lady. "I saw the body of a man, I saw him in the Atlantic Wharf, where he met my boy, named Plianasah. I hid him that a man's head was floating above the water in the Valley's gutter; upon receiving this intimation he was once again taken to the wharf, and I hid him there. He saw the body, lifted up the head, recognized it at once to be that of Elijah Moxon; the body into shallow water, where it remained till the Purcell came and removed it." Dr. Shaw, who examined the body, said that the body had the features of a man, and that the hands were the features of a man, the hands, near the right elbow, and slight on the face—most of them post mortem—he found signs of violence on the body. From the appearance of the body and the history of the case, Dr. Shaw was of opinion that the death of the man was not a natural death, but that it had resulted from suffocation or drowning.

**STORIA RACING CLUB AUTUMN MEETING.**

allowing entries and acceptances were declared of  
day—

**FIRST DAY.—FRIDAY, MARCH 11.**

**HURDLE RACE.**

Brown's g g Yorkshire, aged  
Bailey's b g Dictator, aged  
C. Norman's b g Potomac, aged  
Moran's b g Victor, aged  
Bau's b m in Kaleid, aged  
Bau's b m in Kaleid, aged  
Bau's b m in Kaleid, aged

Wendover's b Fingh-a-Ballagh, aged  
Whitbread's b Maid of the Mist, aged  
Wyle's b Valentine, aged  
Wright's b Fair Sir Walter, aged  
Zellitt's b m Bug Bull, 6 years  
Zellitt's c b Hopster (late Faugh-a-Ballagh), 6 years.

ST. LEGER STAKES.  
Wilson's b b Orlando by The Premier  
Fisher's b c Charon by Ferryman  
Wright's b c Lampbrush by Fortyman.

HANDICAP PLATE OF £100.  
Whelan's b c Austral, aged  
Whitcomb's b c Turfboy, aged  
Went's b c Sheet Anchor, 5 years  
Wiley's b c Triumphant, 5 years  
Wright's b c Am, 5 years

[illegible][illegible]

Wick's b b Montmorency, 6 years	...	...	6
Watson's b b Duke of Montmorency,	...	...	6
Walter's b b Lilly, 3 years	...	...	6
Wentworth's b b Monkey, aged	...	...	7
PLATE OF \$50.			
Wheeler's b b Austral, aged	...	...	6
Whitshop's b b Marziano, 5 years	...	...	6
Whitson's b b Tootyboy, aged	...	...	6
Whitson's b b Frolicsome, aged	...	...	6
Whitson's b b Warrior, aged	...	...	6
Whitson's b b The Jolly, 3 years	...	...	6
Whitson's b b Gossamer, 3 years	...	...	6
Whitson's b b Royton	...	...	6
Whitson's b b Lucy, aged	...	...	6
Whitson's b b Right Warrior, 4 years	...	...	6
Whitson's b b Ant, 3 years	...	...	6
Whitson's b b Pretence Boy, 3 years,	...	...	6

SECOND DAY.—SATURDAY, MARCH 12.  
GRAND STAND STAKES.  
Carmichael's b g Milstead, aged  
Moran's b g Victor, aged  
Lequell's b filly Moran, 3 years  
McDonald's ch c Westward, 3 years  
Fisher's b c Charon, 3 years  
Leighman's b f Kestrel, 3 years.  
STURGEON GENERAL'S.  
Mills' b filly Florence, by Milano—Rose de Florence  
Watson's c —, by Thrill  
— g —, by Snowdon  
Donnell m b c Chancellor  
Aldrich's b f Starlight  
Rhiner's b f True Blue  
— b c —, by Australia, late Lord of Oke.

[illegible]

5444 m's b m Matilda, 3 years ... 6 7  
 TOWN PLATE.  
 Field's b b Sloop, aged  
 14 m's b b Glencoe, 5 years  
 5445 m's b b Lily, 5 years  
 5446 m's b b Sharon, 3 years  
 5447 m's b b Keated, 3 years  
 b c Impregnable, 3 years  
 5448 m's b b Prater, 4 years.  
 STEPHENHAMS.  
 F. Brown's b b Ladbroke, aged  
 14 m's b b Remondet, aged  
 5449 m's c b c Prince Rupert, 6 years  
 5450 m's b b Rocker, aged  
 5451 m's c b c Carrington, 5 years  
 5452 m's b b Dutchman, aged

Cowell's b x Young Mocking Bird, 5 years  
 Collins's b x Bongo, aged  
 Coburn's b x Tattler, 5 years  
 Cohen's b x Snapper, aged.

**HELEN SWITZER.**  
 Schaefer's b x Austral, aged (23)  
 Schaefer's b x Merrimack, 5 years (20)  
 Schaefer's b x Torrey, aged  
 Schaefer's b x Triumph, aged  
 Schaefer's b x Ant, 3 years (25)  
 Schaefer's b x Chief, 5 years (24)  
 Schaefer's b x The Flyer, 2 years  
 Schaefer's b x Plover, 4 years (21)  
 Schaefer's b x Gaudy, 5 years (23)  
 Schaefer's b x Rambler, 5 years (25)  
 Schaefer's b x Prentice Boy, 2 years (22)  
 Schaefer's b x Albat, 5 years (24)

Neighbourhood of 4141 Walter, and  
 subject is a Jack Tar, 6 years.  
 subject is any sailors received from Sydney.

ov.au/nla.news-page1



















This image shows a blank, aged, cream-colored page, likely an endpaper or flyleaf from an old book. The paper has a slightly textured appearance with some minor discoloration and dark smudges, particularly along the right edge and bottom. A vertical crease or fold is visible near the right edge. The page is set against a dark background.



